

**JOHNSON &
BORENSTEIN, LLC**
ATTORNEYS AT LAW

12 Chestnut Street
Andover, MA 01810-3706
Tel: 978-475-4488
Fax: 978-475-6703
www.jbllclaw.com
don@jbllclaw.com

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Zoning Board of Appeals

Mark B. Johnson (MA, NH, DC)
Donald F. Borenstein (MA, ME, NH)

Gregory R. Richard (MA, NH)
Kathleen M. Heyer (MA, NH)
Thomas D. Orr (MA)
Gordon T. Glass (ME, MA)

Of Counsel
Robert W. Lavoie (MA, NH)

Paralegals
Karen L. Bussell
Lianne Patenaude
Ellen M. Melvin
Tina M. Wilson

June 10, 2020

Via E-mail- koshivosk@graffton-ma.gov

Town of Grafton
Zoning Board of Appeals
c/o Katrina Koshivos
30 Providence Road
Grafton, MA 01519

**Re: High Point Estates, Request for Determination of Completeness of
Subdivision and Petition to Accept High Point Road as a Public Way**

Dear Chairperson McCusker and Zoning Board of Appeals Members,

I have recently been retained to assist in the representation of Peter Hingorani and Adams Road Trust in connection with their request for a determination that the High Point Estates subdivision has been completed and their petition for public acceptance of the subdivision roadway.

I understand there may be some question as to whether the Zoning Board is the appropriate authority to perform the reporting and recommendation role called for in Mass.Gen.Laws 41, § 81I, or whether the Planning Board must undertake that role directly. Although the Planning Board should certainly be invited to submit information and comments to the Zoning Board (as recommended by the Comprehensive Permit regulations, 760 CMR 56.05(3)), the report and recommendation to be made to the Town's Select Board regarding public acceptance of the project's roadways should be made by the Zoning Board pursuant to its authority under the Comprehensive Permit

Statute, Mass.Gen.Laws c. 40B, s. 21, and as a natural and practical continuation of its long-running oversight over the development of the project's roadways.

In the case of High Point Estates, the definitive subdivision plan was approved and endorsed "*Approval by the Town of Grafton Zoning Board of Appeals acting as Planning Board in its capacity as the Comprehensive Permit granting authority under G.L. c. 40B.*" Similarly, the Zoning Board has continued to act in the role of the Planning Board throughout the history of the project, releasing the project's subdivision covenant; joining as a party to the project's Tripartite Agreement; authorizing reduction of the subdivision security; monitoring subdivision construction; retaining and directing a review engineer; and, most recently, directing an evaluation of the subdivision roadways in connection with a determination of the completeness of the subdivision. The Zoning Board is uniquely qualified to report and recommend on the status and condition of the project's roadways, given its experience with and oversight of the project.

I believe this position is consistent with existing case law concerning the extent of the Zoning Board's authority over comprehensive permit projects and its role beyond issuance of initial project approval. "The board of appeals shall . . . have the same power to issue permits or approvals as any local board or official who would otherwise act with respect to such application . . ." Mass. Gen. Laws c. 40B, § 21. "The phrase 'permits or approvals,' read in the context of the entire Act, refers to . . . approvals typically given on application to, and evaluation by, separate local agencies, boards, or commissions . . ." Groton Zoning Bd. of Appeals v. Housing Appeals Comm., 451 Mass. 35, 40 (2008). Importantly, this means "the [Zoning Board of Appeals], when acting on an application for a comprehensive permit under the act, has the same scope of authority as 'any town or city . . . planning board . . .'" Amesbury Zoning Bd. of Appeals v. Housing Appeals Comm., 457 Mass. 748, 755 (2010) quoting 760 CMR 56.02 (defining "Local Board").

I have spoken with town counsel, Ginny Kremer, and contacted the Board's attorney, Dan Hill, to discuss this matter. I would be happy to discuss this further with either of them or at the Board's meeting tomorrow evening. Thank you for your time and consideration

Very truly yours,

JOHNSON & BORENSTEIN, LLC

Donald F. Borenstein
Donald Borenstein

DFB

Cc: Ginny Kremer, Esq. *via e-mail- ginny@bbhlaw.net*
Dan Hill, Esq. *via e-mail- dhill@danhillllaw.com*